IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 35377 of 2007(J)

ID.38/2002 of INDUSTRIAL TRIBUNAL, KOLLAM
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PETITIONER:

ABDUL KAREEM MUSLIAR,
"PALMGROVE", RANDAMKUTTY,
KILIKULOOR.P.O., KOLLAM.,
PROPRIETOR, PRODIGI PLASTICS PVT.LTD.,
RANDAMKUTTY, KILIKULOOR , KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.R.RENJITH

RESPONDENTS:
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1. THE INDUSTRIAL TRIBUNAL, KOLLAM
REPRESENTED BY ITS SHERASTHDAR.

2. G.RAGHU CHALUVILLA VEEDU,
CHENTHAPUR, DECENT JUNCTION P.O.,
KOLLAM.

BY GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN,J

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W.P.(C).No.35377 of 2007

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Dated this the 29th day of November, 2007

JUDGMENT

The petitioner challenges Ext.P3 award in I.D.No.38/2002 of the Industrial Tribunal, Kollam. The issue referred for adjudication was:

> " Whether the denial of employment to Sri.G.Reghu, Sales Clerk, Prodigi Plastics (Pvt.) Ltd., Kollam with effect from 31.3.2002 is justifiable or not: If not what relief the workman is entitled to?"

2. The petitioner took the contention that there was no denial of employment but only closure of the establishment. Although the petitioner did not adduce any evidence despite several postings the Tribunal accepted the contention of the petitioner that the establishment was closed down. However, the Tribunal directed the petitioner to pay gratuity and closure compensation to the workmen involved. This is under challenge in this writ petition. The contention raised by the petitioner is that the Tribunal has travelled beyond the scope of reference in so far as the issue referred was denial of employment and the Tribunal accepted that there was no denial of employment but

only closure of establishment. Secondly the petitioner would contend that the Tribunal had no jurisdiction to direct payment of gratuity because such jurisdiction vests exclusively with the authority prescribed under the Payment of Gratuity Act. The third contention is that the question of payment of closure compensation was not an issue referred and therefore the Tribunal went wrong in directing payment of closure compensation. Lastly, the petitioner contended that even assuming that the petitioner is liable to pay compensation that can only be three months' salary as provided under the Industrial Disputes Act.

3. I have considered the rival contentions in detail. Ext.P3 award is dated 13.2.2007 and the writ petition is filed only on 20.11.2007. The long delay in challenging the same is explained in para 4 of the writ petition as follows:

> "The petitioner begs to point out that the matter was actually entrusted with the Junior Counsel attached to the office of the counsel who appeared on behalf of the management. Somehow the Junior Counsel failed to pursue the matter with due diligence and thus the case could not be conducted properly. It was only when Ext.P4 notice was served did the management come to know that the case was disposed of against it, without getting adequate opportunity to defend the case. As and when Ext.P4 was served, application was submitted to get the certified copy of the award and even without wasting a fraction

> of a second, the management approached the lawyer at Ernakulam and instructed him to file a writ petition. Hence, it may be seen there is no negligence or latches on the part of the management in prosecuting the case. Delay, even if any, (not conceding), may be condoned otherwise the petitioner will be put to irreparable injury and loss."

4. In para 2 of the Ext.P3 award the Tribunal has observed as follows:

> "Above reference was accepted to file and issued notice to the parties pursuant to which, both sides entered appearance and submitted their pleadings. Thereafter, the matter was posted for enquiry. On 22.7.2006, the worker was examined as WW1 and Exts.A1 and A2 were marked. He was cross examined by the counsel for the management. The worker closed his evidence and the matter was posted for management's evidence to 19.8.2006. The management did not adduce any evidence, despite several postings were given on 19.8.2006, 30.9.2006, 18.11.2006 and as last chance on 6.12.2006. On 6.12.2006 also the management did not adduce any evidence. Therefore, the matter was posted for hearing to 30.12.2006. On 30.12.2006, the management was absent and there was no representation on their behalf. Therefore, the hearing was adjourned to 16.1.2007 which was later adjourned to 13.2.2007. On 13.2.2007 also, the management was absent and there was no representation on their behalf and therefore, the matter was taken up for award."

5. In view of the above situation, I am not inclined to accept the explanation furnished by the petitioner for the long delay in challenging Ext.P3. It cannot be assumed that even if what is stated in Ext.P4 is true the petitioner would have sat

quiet for all these months. He was aware of the proceedings before the Labour Court and there is no explanation as to why he did not make enquiries regarding the status of the case for such a long period from 22.7.2006 till November 2007. Therefore, I am satisfied that there is clear delay and laches on the part of the petitioner in approaching this Court to challenge Ext.P3.

6. Secondly assuming that after accepting the contention of the petitioner-management that there is no denial of employment and only closure, the Tribunal could not have directed the payment of gratuity and retrenchment compensation. I am not inclined to entertain this writ petition on that ground because after having admitted that he had closed down the establishment and that the second respondent workman was a workman in that establishment, he cannot now deny that gratuity and retrenchment compensation are due to the second respondent workman as provided under the Payment of Gratuity Act and Industrial Disputes Act, which only has been directed in Ext.P3 award. The petitioner could not advance before me any argument against his liability to pay gratuity and retrenchment compensation to the workman involved. As such I

am not inclined to exercise my discretionary jurisdiction in favour of the petitioner against Ext.P3 since the liability could not have been validly disputed by the petitioner before any forum.

Regarding the last contention that even assuming that he is liable to pay compensation that can only be three months' pay, I am of opinion that, that contention is available to the petitioner in the C.P., filed by the second respondent before the Labour Court on which the petitioner has received Ext.P4 notice. The Labour Court has not yet quantified the amount pay able by the petitioner. If it is only three months' wage, it would be open to the petitioner to establish the same before the Labour Court. Therefore without prejudice to the right of the petitioner to establish that contention before the Labour Court in the C.P, this writ petition is dismissed.

S.SIRI JAGAN, JUDGE

dvs